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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,730	01/13/2004	Wayne R. Arden	2017	4881

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EXAMINER

PATEL, TARLA R

ART UNIT	PAPER NUMBER
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3772

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/757,730

Applicant(s)

ARDEN, WAYNE R.

Examiner

Tarla R. Patel

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 June 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/27/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

The Information disclosure statement (IDS) submitted on 04/27/2004 is acknowledged by Examiner. The IDS meets the requirements of 37 CFR 1.97 and 1.98 and therefore the references there in have been considered.

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "38" has been used to designate both free end and stitches. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1-3, 5-7,9-32 rejected under 35 U.S.C. 102(b) as being anticipated by Modglin (6,666,838).

Modglin discloses a brace (10) adapted to mount externally of a person's torso in order to support/sheet the person's back, the brace comprises a support piece/sheath (64,26) including an elongated central portion (64,26) and a plurality of pairs of oppositely projecting lobe portions (58,56) extending laterally of said central portion, said lobe portions constructed of a stiff yet bendable material, and a support band sized and adapted to encircle the person's torso and operative to releasably secure said support piece alongside the person's back when in a mounted state,

said support band constructed of a flexible material (column 1 line 60) and having opposite end portion provided with cooperative fasteners (66,92) whereby said end portions may be releasably secured together in a fastened state.

With respect to claims 2,3,14 and 32 Modglin discloses device made of flexible bendable material. With respect to the limitation of the claims flexible material of Modglin's device to use it to better fit and flexibility of device around user's torso.

With respect to claims 5-6,15-21 and 23-24 Modglin discloses sleeves and pouches (32,34) connected with strip material (106). With respect to the limitation of the "sleeve" the examiner interpreted the pockets (32,34) (column 1 lines 62-67 and column 2 lines 1-17) of Modglin as sleeves and pouches, since these pockets of Modglin are made of flexible, breathable material and a pouch inherently includes an interior portion (column 2 line 4-5). With respect to the limitation of the "stretchable material" the examiner interpreted flexible, breathable material to be made of any group of fabrics consist of non-stretchy fabrics and resilient stretchy fabrics that is required by claim 15. As required by claim 21, the pocket is

provided with a releasable pouch closure (28). As required by claim 20 pouch and said end portions are formed of a common material.

With respect to claim 25 Modglin inherently discloses device sheath interior has a periphery contoured to the shape of said support piece (see fig 3).

With respect to claim 22 Modglin discloses said fasteners permit size adjustment of said band (column 1 lines 38-40).

With respect to claims 7 Modglin discloses said sleeves are in parallel spaced relation to one another.

With respect to claims 9 and 27 Modglin discloses lobe portions of each said pair extend equidistantly of said central portion (see fig 3).

With respect to claims 10 and 28 Modglin discloses said lobe portions being formed by notches located between adjacent ones of said lobe portions (42,44).

With respect to claims 11 and 29 Modglin discloses at least three pairs of lobe portions, there being a primary lobe portions (64) and two secondary lobe (56,34 and 58,32) portions, one on either side of said primary pair of lobe portions.

With respect to claims 12 and 30 Modglin discloses primary portion (64) is greater than secondary lobe portions (56,58) (see fig 3).

With respect to claims 13 and 31 Modglin discloses central portion (64) is wider than secondary lobe portions (56,58) (see fig 3).

With respect to claim 14 Modglin discloses stiff yet bendable material is plastic (column 4 lines 15-19).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4 and 8 rejected under 35 U.S.C. 103(a) as being unpatentable over Modglin (6,666,838) in view of Petty-Saphon (5,737,774).

Modglin (6,666,838) substantially discloses the invention as claimed, see rejection to claims 1-3, 5-7, 9-32 above; however, Modglin does not

specifically disclose that said strips extend perpendicularly to central portion.

However Petty-Saphon teaches a back support with strips extending perpendicularly to said central portion.

At the time of the invention, it would have been an obvious to one having ordinary skill in the art to modify the device of Modglin with the strips of Petty-Saphon (element 1) to better support the back brace.

With respect to claim 8, the back brace with the strips are of a different width than another of said strips, it would have been obvious to one of ordinary skill in the art to modify the strips of Modglin and Petty-Saphon, as a matter of design choice to make the strips of different width, since applicant has not disclosed that strips having same width solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with strips with different width.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tarla R. Patel whose telephone

number is 571-272-3143. The examiner can normally be reached on M-F 6-3.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TP

Patricia Bianco
11/27/00